The Solicitors' Journal

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Current Topics.

The Civil Judicial Statistics for 1941.

AT the end of each calendar year an impressive official volume used to be issued of civil judicial statistics for the preceding year. This year it has given way to demands for economy, but a short circular which has just been published provides an adequate analysis of the work in the courts during the historic year of 1941. An interesting feature, apart from the general decrease in civil work, was the substantial increase in the number of matrimonial petitions filed, being 1,203 over the preceding year. Of the total of 8,388, 2,667 were for desertion, 343 for cruelty, 173 for lunacy, 21 for presumed decease, and the remainder presumably were for adultery, although this is not stated. Application for leave to present a petition for divorce within three years of the date of the marriage was made in 53 cases, but the petition was granted in 18 cases only. The total number of decrees *nisi* for dissolution of marriage was 6,317, those on husbands' petitions numbering 3,260 and those on wives' petitions numbering 3,057. The total number of poor persons' proceedings decreased by 529 to 2,094. Of these, 94 per cent. were matrimonial causes, which decreased by 444 to 1,978. Poor persons were successful in 97 per cent. of the cases to which they were parties. The total proceedings in the three divisions of the High Court showed a decrease of 35 per cent. as compared with the preceding year, from 95,406 to 62,063. There was a decrease in the Chancery Division of 6,124 to 10,940. The decrease in the King's Bench Division was of 27,722 to 41,799. In the Probate, Divorce and Admiralty Division there was an increase of 503 to 9,324. There were 412 appeals set down in the Court of Appeal, a decrease of 84. Appeals from county courts numbered 111. The total of appeals and special cases entered or filed in the High Court from inferior courts was 241, an increase of 33. The number of appeals to the House of Lords rose from 28 to 38, and Privy Council appeals rose from 59 to 61. County court proceedings decreased 37 per cent. in number from 842,739 to 533,100. Of the actions for trial 46 per cent. (286,518) were determined without hearing or in the defendant's absence. Seventy-four per cent. of the actions heard were decided by a judge and 26 per cent. by a registrar. There were 219,979 judgment summonses issued, as compared with 297,360 in the preceding year. Of these 132,015 were heard, as compared with 172,281 in 1940. Orders of commitment were issued in 83,177 cases, as against 105,723 in the previous year; 864 debtors were imprisoned, compared with 983 in 1941. Hire-purchase actions for the recovery of possession numbered 19,992, compared with 17,669 in 1940. Having regard to the exciting extra-judicial events of 1941 the general trend of the figures need occasion no surprise.

War-time Disclosure in Company Accounts.

TENDENCIES of recent years have been towards increased disclosure in the published accounts of limited companies. Greater co-operation and lessening competition in trade and industry have removed much of the sting of the old criticism of greater frankness, that it merely provided trade rivals with much-needed information. It is therefore interesting to see, in relation to this general trend, that on 2nd December the Council of the Institute of Chartered Accountants in England and Wales approved a memorandum of their Law and Parliamentary Committee making certain recommendations as to disclosures in modern balance-sheets and accounts. One of these relates to tax reserve certificates. It is considered that regard should be had to the relevant conditions of issue set forth in the leaflet issued by the Treasury on 22nd December, 1941, and it is recommended accordingly that (1) the amount of tax reserve certificates held should be shown as a separate item in the balance sheet and grouped with the current assets; and (2) the 1 per cent. per annum allowed on the surrender of the certificates in payment of taxation, etc., should be treated as interest and not as a reduction of the taxation charge. It is also suggested that the accrued interest to the date of the balance sheet should not be taken to credit unless the certificates have been surrendered before the balance sheet has been signed. With regard to war damage contribution, it is pointed out that although it is to be treated under the War Damage Act, 1941, for all purposes as outgoings of a capital nature, it has been the general practice on the ground of financial prudence to make provision for the full contribution out of available profits or free reserves. Whatever course is adopted, however, it is recommended that the annual accounts should show the facts in order that they may be before the shareholders when approving the accounts. There is a recommendation with regard to war damage premiums that, in whatever manner the contribution under Pt. I may have been treated, the premiums under Pt. II of the Act should be provided out of available profits or free reserves by reference to the period covered. The recommendations, however, with regard to war damage contributions and premiums may not be appropriate to certain classes of companies, such as statutory companies, property companies and building societies, or where property is held for sale. The Council's recommendations are in keeping with the high aims of the great professional body which it represents, and they will without doubt exert a great influence on future company administration.

Cambridge House and Free Legal Advice.

A MEMORANDUM recently issued by the Head of Cambridge House points out that for close on half a century Cambridge House has provided free legal advice for poor people. In the year 1899–1900 only 224 clients were advised, but by 1937–1938 the number had grown to 3,000. Before the war the centre had been open one night a week, but when war began Cambridge House was appointed as the centre to which all legal cases were to be referred by the Citizens' Advice Bureaux in London south of the Thames. Even at the height of the attacks on London, Cambridge House did not fail in its task. From the beginning of the war the Free Legal Advice Centre had been kept open all day from Monday to Friday, with a special late night session on Thursdays. In the twelve months which ended in April, 1942, the figure for interviews and letters was nearly 8,000. Nor does this figure show any sign of reduction: in July alone of this year another 1,250 interviews and letters were recorded. Considerable correspondence is now undertaken with applicants and the other parties to a dispute, and a panel has been formed of solicitors and barristers who have volunteered to give written opinions on different points on law which may arise. Other solicitors have offered to write letters where needed and by these preliminary measures many cases of goods being detained or of rent being overcharged have been settled, and many sums of money recovered as damages. The services of the centre are available to all whose incomes do not exceed £3 10s. a week, or in the case of a married couple, where the joint income does not amount to more than £4 10s. a week. In many thousands of cases the only opportunity these people have of obtaining legal advice is through the services of such a centre as Cambridge House. The opinion is expressed in the memorandum that the time has come for an extension of the free legal assistance service. The question is put as to the form the organisation of this social service should take. Should it be under the control of local authorities, of The Law Society, or of the people who will benefit from the service? In deciding these and many other problems which will arise, it is hoped that the records and experience of the Cambridge House Centre and its friends will prove of valuable assistance. Visitors are welcomed on Thursday evenings. For the first time in forty years an appeal is made for funds. The full time services of the Registrar are given free, and all the court work undertaken directly on

behalf of Cambridge House is done voluntarily. Practically the whole of the money contributed to the centre is used for office expenses connected with the centre. Subscriptions should be made payable to Cambridge House, and sent to the Hon. Treasurer, 131, Camberwell Road, S.E.5.

Housing Authorities and War Damage.

In Circular 2720, issued by the Ministry of Health on 30th November, it is stated that the question of the specific items which can be admitted by the War Damage Commission for reimbursement as "proper cost" under s. 3 (3) and (5) (*a*) of the War Damage Act, 1941, has been under consideration by the War Damage Commission in consultation with the Treasury, the Ministry and Associations of Local Authorities, and agreement has now been reached. The agreement, which is contained in an annexed document, deals with materials, vehicles, plant, tools, wages, supervisory staff, professional staff and head office expenses. As to work carried out by contract, the charges are to be the actual amount paid under the contract provided that the contract is on a basis not less favourable to the Commission than that provided for the Model Forms of Price Cost Contract issued by the Ministry of Home Security. The Commission reserves the right to examine the charges in relation to the expenditure incurred in any individual case, and to be entitled to call for an explanation where the cost appears to be unreasonable. The items in question apply only to work carried out under the Housing (Emergency Powers) Act, and to local authorities' other properties such as town halls, schools, etc., in respect of which individual claims are to be made under the rules appropriate to private claimants. In consultation with the War Damage Commission the Minister has prepared a form of Financial Statement (Form W.D.P.3) in respect of the period to 31st March, 1942, which is forwarded for completion by the local authority and return in duplicate to the Ministry of Health as soon as possible.

War Damage Valuations.

The War Damage (Valuation of Hereditaments in Special Cases) Regulations made by the Treasury on 3rd December, 1942, under s. 3 (5) of the War Damage Act, 1941, deal with the valuation of hereditaments consisting of or comprising premises of a kind not normally the subject of sales in the open market. The valuations dealt with are those for the purposes of s. 3 (4) of the 1941 Act (dealing with the amount of the value payment) and for the purposes of s. 4 (1) of the 1941 Act (dealing with the factors determining whether a payment should be a value payment or a payment of cost of works). The power to make regulations dealing with the latter valuation is contained in the War Damage (Amendment) Act, 1942, Sched. I, para. 4 (2). The regulations provide (para. 2) that valuations for the purposes of s. 3 (4) and s. 4 (1) (*a*) of the 1941 Act of the type of hereditament mentioned above shall be of the fee simple in the hereditament with vacant possession, subject to such restrictions, easements and rights as are specified in s. 3 (5) of the 1941 Act. "Hereditament" is defined (para. 1) as including part of a hereditament. Paragraph 3 provides that on making such valuations regard shall be had to certain matters. The first two of these matters is the market value of the hereditament for use for any purpose other than the normal use, and the market value of the hereditament for redevelopment. Paragraph 1 defines market value as the amount which the fee simple in the hereditament might have been expected to realise on a sale thereof made in the open market with vacant possession subject to such restrictions, easements and rights as are specified in s. 3 (5) of the 1941 Act. The third matter to which regard must be had is (except in the case of a valuation of the hereditament as a site for the purposes of s. 4 (1) (*a*) of the 1941 Act) the proper cost of equivalent replacement of the hereditament less, in the case of a valuation to be made in the state in which the hereditament was immediately after the occurrence of the war damage, the estimated reasonable cost of making good the war damage. "Equivalent replacement" is defined (para. 1) as the provision of a hereditament of such size, character and situation as to be reasonably capable of serving as effectively as the first-mentioned hereditament the purpose for which that hereditament was normally used. "Proper cost" in relation to equivalent replacement is defined in para. 1 to mean, where a valuation under s. 3 (4) of the 1941 Act is concerned, the proper cost as defined in s. 3 (3) of the 1941 Act, substituting for the words "current when the works are executed" the words "current at the 31st March, 1939." The effect of this modification in the definition for the purpose of the regulations is that regard must be had to the prices of materials and rates of remuneration for services current at the 31st March, 1939, and therefore it seems to cut down the proper cost in the case mentioned. Where a valuation after execution of the works for the purposes of s. 4 (1) (*a*) of the 1941 Act is in question "proper cost" means in relation to equivalent replacement under the regulations the same as in s. 3 (3) of the 1941 Act, substituting for the words "current when the works are executed," "current when the works are deemed to be executed." In every case there must be deducted an appropriate amount from the cost so arrived at in respect of any redundancy, obsolescence, structural defects or serious decorative deterioration in the hereditament in the state in which it is or is deemed to be for the purpose of any valuation. Moreover, proper cost in relation to equivalent replacement includes the estimated cost of providing a site economically suitable and appropriate as to size, character and situation. Any of the valuations mentioned in para. 2 must be taken to be the highest amount ascertained after paying regard to the matters referred to above. If, however, the Commission is satisfied that it is probable or reasonable that the hereditament or part thereof will continue to be used for the normal use, all valuations for the purposes of ss. 3 (4) and 4 (1) (*a*) of the 1941 Act must be made on the basis that such part of the hereditament as would be appropriate for the purpose of equivalent replacement was subject to a perpetual covenant restricting the use thereof to the normal use. Costs and market values in relation to valuations under the regulations for the purposes of s. 3 (4) are to be ascertained by reference to prices current at 31st March 1939.

Solicitors : The Compensation Fund.

Regulations dealing with applications to the High Court under Sched. I of the Solicitors Act, 1941, were made under para. 6 of that schedule on 20th November. Applications under para. 4 (2) (by the Council for an order to deliver up documents) must be made in the Chancery Division by originating summons and intituled "In the Matter of a Solicitor (without naming the solicitor) and in the Matter of the Act." Except where otherwise ordered by the court or a judge, the following persons are to be made respondents : (1) the solicitor of whom the Council allege that they have reasonable cause to believe that he or his clerk or servant has been guilty of any such dishonesty as is mentioned in s. 2 ; (2) in any case where the Council allege that they have reasonable cause to believe that the clerk or servant of a solicitor has been guilty of such dishonesty, such clerk or servant ; and (3) if an order is applied for in respect of any banking account kept in the name of a firm, every member of the firm. Notice of the application must be served upon every banker with whom any banking account in respect of which an order is applied for is kept. An application to a judge in chambers under para. 4 (5) of Sched. I (for the return of documents) must be made in the Chancery Division by originating summons. It must be intituled "In the Matter of a Solicitor (without naming the solicitor) and in the Matter of the Act," and the Council must be made respondents. Where, however, an order has been made under para. 4 (2) of Sched. I for the production or delivery of any deeds, wills, securities, papers, books of account, records, vouchers or documents, an application under para. 4 (5) of Sched. I for the return of any such deeds, etc., must be made by ordinary summons taken out in the existing proceedings. Evidence on any of the above applications must be by affidavit verifying a statement of the facts and matters relied upon. In the case of an application under para. 4 (2) of Sched. I to the 1941 Act, the statement must specify the deeds, wills, securities, papers, books of account, records, vouchers or documents which the Council require to be produced or delivered, and the place or places at which and the person or persons to whom it is proposed that they should be produced or delivered. Respondents to any of the above summonses are not required to enter an appearance. The court may at any stage direct that any other person be made a party or direct that notice of the application be served on any person. The rules and practice of the Chancery Division apply to all the proceedings dealt with in the regulations so far as they are consistent with the Act and the regulations.

Recent Decisions.

In *Bishop of Gloucester* v. *Cunnington*, on 11th December (*The Times*, 14th December), the Court of Appeal (Lord Greene, M.R., Scott and MacKinnon, L.JJ.) gave their reasons for holding that a parsonage house belonging to an ecclesiastical benefice was not within the control of the Rent Restrictions Acts. The court held this on the maxim *generalia specialibus non derogant*, the relevant statutory provisions in force when the Rent Restrictions Acts were passed making residence by the incumbent in the parsonage house compulsory except where a licence was obtained (see 21 Hen. VIII, c. 13, and the Pluralities Act, 1838, ss. 32 and 59).

In *London Brick Co., Ltd.* v. *Robinson*, on 15th December (*The Times*, 16th December), the House of Lords (The Lord Chancellor, Lord Atkin, Lord Thankerton, Lord Russell of Killowen and Lord Romer) held that the word "widow" in the phrase "if the workman leaves a widow" in s. 8 of the Workmen's Compensation Act, 1925, did not mean a widow who was making a claim under the Act, and therefore the infant child of a workman who was killed as the result of an accident arising out of and in the course of his employment was entitled to recover the children's allowance provided in s. 8 although the widow was not a claimant under the Act, but had elected to claim under Lord Campbell's Act and the Law Reform (Miscellaneous Provisions) Act, 1934, and had accepted a sum of £1,750 in settlement of her claim.

COUNTY COURT CALENDAR FOR JANUARY, 1943.

Circuit 1—Northumberland
HIS HON. JUDGE RICHARDSON
Alnwick,
Berwick-on-Tweed,
Blyth,
Consett, 22
Gateshead, 12
Hexham,
Morpeth, 25
††Newcastle-upon-Tyne, 8, 15 (J.S.), 19 (B.)
North Shields, 28
Seaham Harbour, 11
South Shields, 20
Sunderland, 13, 27

Circuit 2—Durham
HIS HON. JUDGE GAMON
Barnard Castle, 14
Bishop Auckland, 26
Darlington, 13 (J.S.), 27
*Durham, 12 (J.S.), 25
Guisborough,
Leyburn, 18 (R.)
††Middlesborough, 6, 20 (J.S.)
Northallerton, 28
Richmond,
††Stockton-on-Tees, 8, 19
Thirsk, 21 (R.)
West Hartlepool, 7

Circuit 3—Cumberland
HIS HON. JUDGE ALLSEBROOK
Alston, 29
Appleby, 9 (R.)
††Barrow-in-Furness, 13, 14
Brampton,
*Carlisle, 27
Cockermouth, 21
Haltwhistle,
*Kendal, 26
Keswick,
Kirkby Lonsdale, 12 (R.)
Millom, 19
Penrith, 28
Ulverston, 12
††Whitehaven, 20
Wigton,
Windermere, 7 (R.)
*Workington,

Circuit 4—Lancashire
HIS HON. JUDGE PEEL, O.B.E., K.C.
Accrington, 21
††Blackburn, 4, 6 (B.), 11, 18 (J.S.)
††Blackpool, 6, 7, 8 (B.), 13, 20 (J.S.)
*Chorley, 14
Clitheroe, 12
Darwen, 22 (R.)
Lancaster, 8
††Preston, 5, 15 (J.S.), 19, 22 (B.)

Circuit 5—Lancashire
HIS HON. JUDGE HARRISON
††Bolton, 13, 19 (J.S.), 27
Bury, 11, 18
*Oldham, 14, 21, 28 (J.S.)
*Rochdale 22, (J.S.), 29
*Salford, 12, 15, 20, 25, 26

Circuit 6—Lancashire
HIS HON. JUDGE CROSTHWAITE
HIS HON. JUDGE PROCTER
††Liverpool, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 28, 29
St. Helens, 6, 20
Southport, 19, 26
Widnes, 8
*Wigan, 7, 21

Circuit 7—Cheshire
HIS HON. JUDGE RICHARDS
Altrincham, 6, 20 (J.S.)
*Birkenhead, 6 (R.), 12, 13, 20 (R.), 25 (J.S.)
Chester, 19
*Crewe, 22
Market Drayton, 15
Nantwich, 8
*Northwich, 21
Runcorn, 26
*Warrington, 7, 13 (J.S.)

Circuit 8—Lancashire
HIS HON. JUDGE RHODES
Leigh, 22, 29
††Manchester, 11, 12, 13, 14, 15 (B.), 18, 19, 20, 21, 25, 26, 28, 29 (B.)

Circuit 10—Lancashire
HIS HON. JUDGE BURGIS
*Ashton-under-Lyne, 15, 22, 25 (B.)
*Burnley, 7, 8
Colne, 6
Congleton, 29
Hyde, 20
*Macclesfield, 12 (B.), 14
Nelson,
Rawtenstall, 13
Stalybridge, 28 (J.S.)
*Stockport, 12, 26, 27 (J.S.), 29 (B.)
Todmorden, 5

Circuit 12—Yorkshire
HIS HON. JUDGE NEAL
*Bradford, 6 (R.B.), 12, 15 (J.S.), 27
Dewsbury, 28
*Halifax, 21, 22 (J.S.)
*Huddersfield, 19, 20 (J.S.)
Keighley, 14
Otley, 13
Skipton, 11
Wakefield, 26

Circuit 13—Yorkshire
HIS HON. JUDGE ESSENHIGH
*Barnsley, 13, 14, 15
Glossop, 20 (R.)
Pontefract, 18, 19, 20
Rotherham, 26, 27
*Sheffield, 12 (J.S.), 15 (R.), 21, 22, 28, 29

Circuit 14—Yorkshire
HIS HON. JUDGE STEWART
Easingwold,
Harrogate, 22 (R.), 29
Helmsley,
Leeds, 6, 7 (J.S.), 13 (R.), 20, 21 (J.S.), 27, 28 (J.S.)
Ripon,
Tadcaster, 19
York, 5

Circuit 16—Yorkshire
HIS HON. JUDGE GRIFFITH
Beverley, 7 (R.), 8
Bridlington, 4
Goole, 19
Great Driffield, 18
††Kingston-upon-Hull 11 (R.), 12 (R.), 13, 14, 15 (J.S.), 18 (R.B.), 25 (R.)
New Malton, 20
Pocklington,
*Scarborough, 5 (S.), 6, 12 (R.B.)
Selby, 29
Thorne, 21
Whitby, 6 (R.), 7

Circuit 17—Lincolnshire
HIS HON. JUDGE LANGMAN
Barton-on-Humber, 1 (R.), 8
††Boston, 14 (R.), 21, 28 (R.B.)
Brigg, 4
Caistor,
Gainsborough, 22 (R.), 25
Grantham, 22
††Great Grimsby, 5, 6 (J.S.), 7 (R.B.), 19, 20 (J.S.)
(*R. every Wednesday*)
Holbeach, 15 (R.)
Horncastle,
*Lincoln, 7 (R.) (R.B.), 11
*Louth, 26
Market Rasen, 12 (R.), 27
Scunthorpe, 11 (R.), 18
Skegness, 13
Sleaford, 12
Spalding, 14
Spilsby, 8 (R.)

Circuit 18—Nottinghamshire
HIS HON. JUDGE HILDYARD, K.C.
Doncaster, 6, 7, 8, 25
East Retford, 14 (R.)
Mansfield, 11, 12
Newark, 15 (R.), 18
*Nottingham, 7 (R.B.), 13, 14 (J.S.), 15, 20, 21, 22 (B.)
Worksop, 12 (R.), 19

Circuit 19—Derbyshire
HIS HON. JUDGE WILLES
Alfreton, 19
Ashbourne,
Bakewell, 12
Burton-on-Trent, 20 (R.B.)
Buxton,
*Chesterfield, 15, 22
*Derby, 13, 26 (R.B.), 27, 28 (J.S.)
Ilkeston, 26
Long Eaton, 21
Matlock,
New Mills, 11
Wirksworth, 14

Circuit 20—Leicestershire
HIS HON. JUDGE GALBRAITH, K.C.
Ashby-de-la-Zouch, 21
*Bedford, 19 (R.B.), 27
Bourne,
Hinckley, 20
Kettering, 26
*Leicester, 11, 12, 13 (J.S.) (B.), 14 (B.), 15 (B.)
Loughborough, 19
Market Harborough, 18
Melton Mowbray, 8 (R.), 29
Oakham, 22
Stamford, 25
Wellingborough, 28

Circuit 21—Warwickshire
HIS HON. JUDGE DALE
HIS HON. JUDGE FINNEMORE (Add.)
*Birmingham, 11, 12, 13, 14, 15, 18, 19 (B.), 20, 21, 22, 25, 26, 27, 28, 29

Circuit 22—Herefordshire
HIS HON. JUDGE ROOPE REEVE, K.C.
Bromsgrove, 22
Bromyard,
Evesham, 20
Great Malvern, 4
Hay, 6
*Hereford, 12, 21
*Kidderminster, 5, 19
Kington, 13
Ledbury,
*Leominster, 11
*Stourbridge, 7, 8
Tenbury,
*Worcester, 14, 15

Circuit 23 — Northamptonshire
HIS HON. JUDGE FORBES
Atherston, 28
Banbury, 22
Bletchley, 26
Chipping Norton, 6
*Coventry, 18, 19 (R.B.), 25
Daventry, 20
Leighton Buzzard, 21
*Northampton, 11, 12, 26 (R.), 29 (R.B.)
Nuneaton, 13
Rugby, 14, 21 (R.)
Shipston-on-Stour, 11

Circuit 24 — Monmouthshire
HIS HON. JUDGE THOMAS
Abergavenny,
Abertillery, 19
Bargoed, 20
Barry, 14
††Cardiff, 11, 12, 13, 15, 16
Chepstow,
Monmouth, 26
††Newport, 28, 29
Pontypool and Blaenavon, 22, 27
*Tredegar, 21

Circuit 25—Staffordshire
HIS HON. JUDGE CAPORN
*Dudley, 12, 19 (J.S.), 26
*Walsall, 14 (J.S.), 21, 28 (J.S.)
*West Bromwich, 13 (J.S.), 20, 27 (J.S.)
*Wolverhampton, 8 (J.S.), 15, 22 (J.S.), 29

Circuit 26—Staffordshire
HIS HON. JUDGE FINNEMORE
Burslem,
*Hanley, 14, 28, 29
Leek, 18
Lichfield, 20
Newcastle-under-Lyme, 19
*Stafford, 15
*Stoke-on-Trent, 13
Stone,
Tamworth, 21
Uttoxeter, 22

Circuit 27—Middlesex
HIS HON. JUDGE TUDOR REES
Whitechapel (*Sitting at Shoreditch County Court*), 15, 22, 29

Circuit 28-Shropshire
HIS HON. JUDGE SAMUEL, K.C.
Brecon, 15
Bridgnorth, 13
Builth Wells, 7
Craven Arms, 5
Knighton, 6
Llandrindod Wells, 8
Llanfyllin,
Llanidloes,
Ludlow, 11
Machynlleth,
Madeley, 14
*Newtown,
Oswestry, 12
Presteign,
*Shrewsbury, 18, 21
Wellington, 19
Welshpool,
Whitchurch, 20

Circuit 29—Caernarvonshire
HIS HON. JUDGE EVANS, K.C.
Bala,
††Bangor, 25
Blaenau Festiniog, 19
*Caernarvon, 27
Colwyn Bay,
Conway, 14
Corwen,
Denbigh,
Dolgelly,
Flint,
Holyhead,
Holywell, 11
Llandudno,
Llangefni,
Llanrwst, 22 (R.)
Menai Bridge, 26
Mold, 22
*Portmadoc, 18
Pwllheli, 15
Rhyl, 13
*Ruthin, 28
Wrexham, 14 (R.), 20, 21

Circuit 30 — Glamorganshire
HIS HON. JUDGE WILLIAMS, K.C.
*Aberdare,
Bridgend,
Caerphilly,
Merthyr Tydfil,
*Mountain Ash,
Neath,
*Pontypridd,
Port Talbot,
*Porth,
*Ystradyfodwg,
(*List not received.*)

Circuit 31—Carmarthenshire
HIS HON. JUDGE MORRIS, K.C.
Aberayron,
††Aberystwyth, 22
Ammanford, 6
Cardigan, 4
††Carmarthen, 19
††Haverfordwest, 20
Lampeter,
Llandilo, 25
Llandovery,
Llanelly, 26, 28
Narberth, 18
Newcastle-in-Emlyn,
Pembroke Dock,
*Swansea, 11, 12, 13, 14, 15, 16

Circuit 32—Norfolk
HIS HON. JUDGE ROWLANDS
Beccles,
Bungay, 4
Diss, 5
Downham Market, 7
East Dereham,
Eye,
Fakenham,
††Great Yarmouth, 21, 22
Harleston,
Holt,
††King's Lynn, 14, 15
†Lowestoft, 8
North Walsham,
*Norwich, 18, 19, 20
Swaffham, 6
Thetford, 12
Wymondham, 13

Circuit 33—Essex
HIS HON. JUDGE HILDESLEY, K.C.
Braintree, 8
*Bury St. Edmunds, 5
*Chelmsford, 11
Clacton, 26
Colchester, 6, 7
Felixstowe,
Halesworth, 19
Halstead, 29
Harwich,
††Ipswich, 13, 14, 15
Maldon, 21
Saxmundham,
Stowmarket, 22
Sudbury, 27
Woodbridge, 20

Circuit 34—Middlesex
HIS HON. JUDGE AUSTIN JONES
HIS HON. JUDGE TUDOR REES (Add.)
Uxbridge, 19, 26

Circuit 35 — Cambridgeshire
HIS HON. JUDGE CAMPBELL
Biggleswade, 5
Bishops Stortford,
*Cambridge, 8 (R.B.), 13 (R.), 20 (J.S.) (B.), 21
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*Huntingdon, 14, 22 (R.)
Luton, 7 (J.S.) (B.), 8, 22 (R.B.)
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*Oundle,
Peterborough, 8 (R.), 12, 13
Royston, 15
Saffron Walden, 4
Thrapston, 6
Wisbech, 8 (R.), 19

Circuit 36—Berkshire
HIS HON. JUDGE HURST
*Aylesbury, 8, 22 (R.B.)
Buckingham,
Henley-on-Thames, 29
High Wycombe,
Oxford, 4, 14, 25 (R.B.)
Reading, 14 (R.B.), 20, 21, 22
Thame,
Wallingford, 11
Wantage, 12
*Windsor, 5, 6, 26, 27
Witney, 13

Circuit 37—Middlesex
HIS HON. JUDGE HARGREAVES
Chesham, 5
*St. Albans, 19
West London, 11, 13, 15, 18, 20, 22, 25, 27, 29

Circuit 38—Middlesex
HIS HON. JUDGE ALCHIN
Barnet, 12, 26
*Edmonton, 7, 8, 14, 15, 21, 22, 28, 29
Hertford, 13
Watford, 20, 27

Circuit 39—Middlesex
HIS HON. JUDGE ENGLEBACH
Shoreditch, 7, 8, 11, 12, 14, 15, 18, 19, 21, 22, 25, 26, 28, 29

Circuit 40—Middlesex
HIS HON. JUDGE JARDINE, K.C.
HIS HON. JUDGE DRUCQUER (Add.)
HIS HON. JUDGE TUDOR REES (Add.)
Bow,
(*List not received.*)

Circuit 41—Middlesex
HIS HON. JUDGE EARENGEY, K.C.
HIS HON. JUDGE TREVOR HUNTER, K.C. (Add.)
Clerkenwell, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

Circuit 42—Middlesex
HIS HON. JUDGE DAVID DAVIES, K.C.
Bloomsbury 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

Circuit 43—Middlesex
HIS HON. JUDGE LILLEY
HIS HON. JUDGE DRUCQUER (Add.)
Marylebone, 7, 8, 12, 13, 14, 15, 19, 20, 21, 22, 26, 27, 28, 29

Circuit 44—Middlesex
HIS HON. JUDGE SIR MORDAUNT SNAGGE
HIS HON. JUDGE AUSTIN JONES (Add.)
Westminster, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

Circuit 45—Surrey
HIS HON. JUDGE HANCOCK, M.C.
HIS HON. JUDGE HURST (Add.)
*Kingston, 5, 8, 12, 15, 19, 22, 26, 29
*Wandsworth, 4, 6, 7, 11, 13, 14, 18, 20, 21, 25, 27, 28

Circuit 46—Middlesex
HIS HON. JUDGE DRUCQUER
Brentford, 11, 14, 18, 21, 25, 28
*Willesden, 8, 12, 13, 15, 19, 20, 22, 26, 27, 29

Circuit 47—Kent
HIS HON. JUDGE WELLS
HIS HON. JUDGE HURST (Add.)
Southwark,
Woolwich,
(*List not received.*)

Circuit 48—Surrey
HIS HON. JUDGE KONSTAM, C.B.E., K.C.
Dorking, 14
Epsom, 6, 13, 27
*Guildford, 7, 21
Horsham, 19
Lambeth, 5, 8, 11, 12, 15, 18, 22, 25, 26, 28, 29
Redhill, 20

Circuit 49—Kent
HIS HON. JUDGE CLEMENTS
Ashford, 4
*Canterbury, 12
Cranbrook,
Deal, 15
*Dover,
Faversham, 11
Folkestone, 18
Hythe,
*Maidstone, 8
Margate, 7
*Ramsgate,
††Rochester, 13, 14
Sheerness,
Sittingbourne, 19
Tenterden, 20

Circuit 50—Sussex
HIS HON. JUDGE AUSTIN JONES
HIS HON. JUDGE ARCHER, K.C. (Add.)
Arundel,
Brighton, 7, 8, 21, 22, 28
††Chichester, 15
*Eastbourne, 20
*Hastings, 12
Haywards, Heath, 13
*Lewes, 11, 18
Petworth,
Worthing, 26

Circuit 51 — Hampshire
HIS HON. JUDGE TOPHAM, K.C.
Aldershot,
Basingstoke, 13
Bishops Waltham,
Farnham, 15
*Newport,
Petersfield, 8
††Portsmouth, 4 (B.), 7, 14, 21
Romsey,
Ryde, 27
††Southampton, 5, 12, 13 (B.), 19
*Winchester, 6

Circuit 52—Wiltshire
HIS HON. JUDGE JENKINS, K.C.
*Bath, 14, 21
Calne,
Chippenham, 26
Devizes, 11
*Frome, 19
Hungerford, 25, 28
Malmesbury,
Marlborough,
Melksham, 22
*Newbury, 20 (R.)
*Swindon, 13, 20
Trowbridge, 15
Warminster,
Wincanton, 22 (R.)

Circuit 53—Gloucestershire
HIS HON. JUDGE KENNEDY, K.C.
Alcester, 20
*Cheltenham, 12, 26
Cirencester, 2
Dursley, 21
††Gloucester, 14, 25
Newent, 4
Newnham, 27
Northleach, 30
Redditch, 15
Ross, 22
Stow-on-the-Wold, 16
Stratford-on-Avon, 28
Stroud, 19
Tewkesbury, 13
Thornbury, 18
Warwick, 29

Circuit 54—Somersetshire
HIS HON. JUDGE WETHERED
††Bridgwater, 8
††Bristol, 4 (J.S.), 5, 6, 7, 11, 15 (B.), 18 (J.S.), 19, 20, 21, 22 (B.), 25 (J.S.), 26, 27, 28
Minehead, 19 (R.)
*Wells, 12
Weston-super-Mare, 13, 14

Circuit 55 — Dorsetshire
HIS HON. JUDGE CAVE, K.C.
Andover, 13 (R.)
Blandford,
*Bournemouth, 15 (J.S.), 18, 19, 21 (R.)
Bridport, 26 (R.)
Crewkerne, 12 (R.)
*Dorchester, 8
Lymington,
†Poole, 6, 27 (R.)
Ringwood,
*Salisbury, 7
Shaftesbury, 4
Swanage,
*Weymouth, 5
Wimborne,
*Yeovil, 14

Circuit 56—Kent
HIS HON. JUDGE SIR GERALD HURST, K.C.
Bromley, 11, 12, 13, 26, 27
*Croydon, 20
Dartford, 14
East Grinstead, 19
Gravesend, 25
Sevenoaks, 18
Tonbridge, 28
Tunbridge Wells, 21

Circuit 57-Devonshire
HIS HON. JUDGE THESIGER
Axminster, 18 (R.)
††Barnstaple, 26
Bideford, 27
Chard, 21 (R.)
†Exeter, 14, 15
Honiton, 18
Langport, 25
Newton Abbot, 21
Okehampton, 22
South Molton,
Taunton, 11
Tiverton, 20
*Torquay, 12, 13
Torrington, 28
Totnes,
Wellington, 18 (R.)

Circuit 58—Essex
HIS HON. JUDGE TREVOR HUNTER, K.C.
Brentwood, 22 (R.)
Gray's Thurrock, 5 (R.)
Ilford, 4 (R.), 11 (R.), 12, 18 (R.), 19, 25 (R.), 26
Southend, 6, 7 (R.), 8, 20 (R.B.), 27 (R.)

Circuit 59—Cornwall
HIS HON. JUDGE ARMSTRONG
Bodmin,
Camelford,
Falmouth, 18 (R.)
Helston, 4
Holsworthy,
Kingsbridge, 8 (R.)
Launceston, 15
Liskeard, 13
Newquay,
Penzance, 12
††Plymouth, 15 (R.), 19, 20, 21
Redruth, 7
St. Austell, 11
Tavistock, 14
††Truro, 8

The Mayor's & City of London Court
HIS HON. JUDGE DODSON
HIS HON. JUDGE BEAZLEY
HIS HON. JUDGE THOMAS
HIS HON. JUDGE MCCLURE
Guildhall, 11, 12, 13 (A.), 14, 15 (J.S.), 18, 19, 20 (A.), 21, 22 (J.S.), 25, 26, 27, 28, 29 (J.S.)

* = Bankruptcy Court
† = Admiralty Court
(R.) = Registrar
(J.S.) = Judgment Summonses
(B.) = Bankruptcy
(R.B.) = Registrar in Bankruptcy
(Add.) = Additional Judge
(A.) = Admiralty

A Conveyancer's Diary.

Lessor's Covenants.

A CORRESPONDENT asks me to deal with the following point: "What is the position after conveyance of the seller of land subject to a lease under which the seller has undertaken obligations to the tenant, such as a covenant to repair the outside of the premises? The seller is responsible to the tenant for breaches of covenant committed by the purchaser, but it is not the practice in such a conveyance to obtain from the purchaser a covenant of indemnity covering any claim by the tenant. Has the vendor any right of indemnity against the purchaser in the circumstances in the absence of an express covenant of indemnity? Apparently under the Law Society's Condition 27 (1) the vendor could in the conveyance insist upon such an indemnity. Is this correct? If there is any substance in the point it is one of every-day application."

This inquiry begins by bringing us back to first principles. The question is only one which matters at all in those instances where the vendor of the reversion on a lease continues, after completion, to be liable on the lessor's covenants. No positive covenant between lessor and lessee is ever enforceable unless there is privity of contract or privity of estate between the parties to the action. Thus there is privity of contract between the original lessor and the original lessee, and so the original lessee can sue the original lessor on the latter's covenant after the defendant has parted with the reversion. There is privity of estate between the person who for the time being has the term and him who for the time being has the reversion, and they can sue one another on certain covenants while that is so, notwithstanding that neither of them was a party to the lease itself. That is the effect of ss. 141 and 142 of the Law of Property Act, 1925. But this last rule is confined to covenants which "have reference to the subject-matter of the lease," to use the words of the Act of 1925, or which "touch and concern the thing demised," to use the older phrase. A repairing covenant, which is the instance used by my correspondent, does undoubtedly touch and concern the thing demised.

But covenants in a lease are not enforceable between parties who are not bound together by privity either of contract or of estate, nor are they enforceable where there is privity of estate but the covenant is collateral. Thus the lessee cannot enforce the lessor's covenant against an assign of the lessor who has assigned to a third holder of the reversion. Nor can an assign of the lessee enforce a collateral covenant against the lessor himself. Equally the lessee cannot enforce a collateral covenant against the assign of the lessor.

The consequence is that although, no doubt, the position contemplated by my correspondent arises very often indeed, one must be on guard against supposing that every assignor of a reversion continues to be liable on every covenant in the lease after assignment. He is not liable at all unless he is the original lessor, because the enforcement of a covenant in the absence of privity of estate (which must always be the position where the prospective defendant has *ex hypothesi* parted with the reversion) must stand on privity of contract, which exists only between the original covenanting parties, viz., the original lessor and original lessee.

The field covered by the question is thus a comparatively narrow one, but the following case frequently arises: A is entitled to Blackacre in fee simple; he leases to B for twenty-one years, covenanting to do exterior repairs; he then assigns the fee simple to X subject to the lease which is still vested in B. So long as B holds the leasehold interest, he can sue X (or the assignee from X) on the repairing covenant by virtue of privity of estate. If this covenant is broken, B can also sue A by virtue of privity of contract. No doubt in practice he will first go against X or other the estate owners in fee simple. But circumstances can quite well arise in which he will desire to proceed against A. The questions are, then: (i) as to A's position under the general law if that occurs, and (ii) whether A's legal advisers on the sale could and should have taken any steps for A's protection.

I can find no authority for the proposition that, in the absence of express provision on the conveyance, A has any right of indemnity against X or X's assigns. But there is nothing to prevent A protecting himself on the conveyance of the fee simple by taking a covenant of indemnity from X. He has, however, no right to insist on the insertion of such a covenant in a conveyance following upon an open contract. On the other hand, he can insist on its insertion if the sale is under the Law Society's Conditions, by virtue of condition 27 (1) and (2), where that condition applies. That condition, so far as material, is as follows: "(1) Where the vendor . . . will, after the completion of the purchase, remain liable in respect of a breach of (*a*) any existing restrictive covenant or stipulation affecting the property sold, or (*b*) any existing positive covenant or provision relating to the property sold, then, if the property is, in the contract, expressed to be sold subject to any such covenant, stipulation or provision, the purchaser shall in his conveyance covenant thenceforth to observe and perform the same, and keep the vendor and his estate and effects, . . . indemnified from all claims in respect of the said covenant, stipulation or provision so far as the same relates to the property conveyed to him; (2) Provided that, unless the vendor . . . is interested in the observance or performance of such existing covenant, stipulation or provision, the covenant by the purchaser shall be by way of indemnity only."

Now this condition calls for some comment. It appears, on the face of it, to be directed towards covenants affecting freeholds, of which restrictive covenants are the most important. It is true that positive covenants are referred to, but, in his excellent commentary on the Law Society's Conditions ("Conditions of Sale,") Mr. Walford lends colour to the idea that the condition is mainly directed to freehold covenants by pointing out that the burden of positive covenants does not run with freeholds. The condition is, however, quite general, and, whatever the first impression which it creates, I have no doubt that it is wide enough to cover such covenants as affect the vendor and are incident to an existing lease of the property sold. The second point is that the condition is not effective unless the property is, in the contract, expressed to be sold subject to the covenant in question. Where this precaution is taken, and where the vendor will continue to be liable for breaches of the covenant after completion, the vendor can insist on the conveyance containing a covenant of indemnity.

I gather from the letter which gave rise to this article, that it is not altogether unusual for no such covenant to be put in the conveyance, and I am afraid that we are all guilty of this omission at times. But it is a rather serious omission, because the contract merges in the conveyance, and, after conveyance, it is not possible to use condition 27 for the vendor's protection.

In my view therefore the correct practice is as follows: Before contract the vendor's solicitors should ascertain whether the property is sold subject to any lease, and whether the lease contains any covenants by the lessor. They should then judge, on the general rules about privity (set out above) whether the vendor will remain liable on any of the lessor's covenants after completion. If he will be so liable, they should, in drafting a contract which incorporates the Law Society's Conditions, insert a special condition to the effect that "the property is sold subject to a lease for *x* years, dated, etc., and made between, etc., and to the covenants and conditions on the part of the lessor therein contained." This clause will bring condition 27 (1) into play. On examining the purchaser's draft of the conveyance, the vendor's solicitors should make sure that it contains a paragraph whereby the purchaser covenants to perform the lessor's conditions contained in the said lease, and should insist on its insertion, as is their right under condition 27 (1). In doing so they will bear in mind that where, as will generally be the case, the vendor will not, after completion, be interested in the observance of the lessor's covenants, the covenant in the conveyance must, under condition 27 (2), be by way of indemnity only. If these steps are taken, the vendor's solicitors will secure for their client such protection as in this matter is reasonably necessary.

Our County Court Letter.

The Profits of Dance Bands.

IN a case at Walsall County Court (*Evans* v. *Mellor and Glover*) the claim was for a declaration that the plaintiff was entitled to one third share in the assets of the Arcadians Super Dance Band, and for payment of the amount found due. The plaintiff's case was that he became a partner in the band about sixteen years ago when the first defendant was a partner. The second defendant became a partner ten years ago. The profits were originally divided monthly between the three partners, but the first defendant afterwards suggested the formation of a reserve fund. A book was accordingly kept by him, in which the earnings of the band were entered. On the outbreak of war, the earnings decreased, and in November, 1940, the plaintiff retired from the band owing to pressure of other work. In the belief that the reserve fund then amounted to £35 or £40, the plaintiff asked for his share. The first defendant, however, failed to produce the book, and explained that the money should remain undivided until the resumption of the pre-war programme. Corroborative evidence was given by an ex-member of the band, who had been the pianist and a partner from 1932 to 1935. After receiving a monthly share of the profits, he was also paid his share of the reserve fund on leaving, by reference to the book kept by the first defendant. The first defendant's case was that he had formed the band in 1927 and had never had any partners. The plaintiff was engaged as a violinist at 4s. a night, which was increased if the hours played were exceptionally long. He had never asked for settlement, and his only reason for leaving was that it was not worth playing for 5s. a night. The existence of a reserve fund was denied, and the only book was a diary of engagements. The second defendant's case was that he had succeeded the plaintiff as pianist, but had never been a partner and was paid so much per performance. He was unaware of any reserve fund. The first defendant's father gave evidence that he had lent his son money to buy instruments, and had been repaid out of the band's earnings. His Honour Judge Caporn made a declaration as asked, and ordered the production within twenty-one days of proper accounts up to the time of the plaintiff leaving the band.

Landlord and Tenant Notebook.

Fitness for Human Habitation : The Standard.

SOON after *Summers* v. *Salford Corporation* had been before the Court of Appeal, I discussed the above subject in the " Notebook " of 24th May, 1941 (85 SOL. J. 238). The court had affirmed (Luxmoore, L.J., dissenting) a decision of Croom-Johnson, J., to the effect that a broken window-sash did not constitute a breach of the statutory covenant (Housing Act, 1936, s. 2 (1) (*b*)), to keep premises let as a dwelling-house in all respects reasonably fit for human habitation. The decision of the Court of Appeal has now been reversed by the House of Lords (p. 391 of this issue).

The facts were that the plaintiff was, and had been for thirty-four years, tenant of a two-storeyed, four-roomed house. One sashcord of the only window of one of the bedrooms broke in February, 1940, and the plaintiff advised the defendants, her landlords, through the rent collector. They did nothing about it, possibly relying too strongly on the views expressed *obiter* by the majority of the court in *Morgan* v. *Liverpool Corporation* [1927] 2 K.B. 31 (C.A.). And on 3rd April the second sashcord broke when the plaintiff was cleaning the window, and both her hands were injured by the fall of the upper sash.

The minority judgment in *Morgan* v. *Liverpool Corporation*—or rather the minority *dictum*, for the court was unanimous in holding that the action failed because no notice had been given to the landlords of the defect—was delivered by Atkin, L.J., as he then was, and I have on previous occasions referred to it as one of those expressions of dissent which are extremely provocative. It is therefore appropriate that our report of the House of Lords decision in *Summers* v. *Salford Corporation* should select the speech of Lord Atkin for summarisation.

In the previous case his lordship had stressed the importance of considering " the class of house and the people with whom we are dealing in the particular circumstances of the case." There was a vast difference between the habitability of a large house with one of many windows not functioning and that of a working-class house with two bedrooms in one of which the only window would not open. In the present case Lord Atkin described the state of affairs in much the same terms : until it was repaired, that only window must either remain permanently closed or permanently open ; either event would prevent the room from being reasonably fit for occupation ; as the room was one of only two bedrooms, it was clear that until repair the whole house would properly be described as unfit for occupation by a working-class family.

But in the new decision a further factor appears to have played an important part. In the Court of Appeal the argument that the defect was one which could quickly be remedied was well received. Lord Atkin's speech indicates a fallacy in this reasoning ; the magnitude of the repairs required, his lordship observed, was not a test of fitness for human habitation.

This recalls the decision in *Boudou* v. *Thornton-Smith* [1941] 1 K.B. 561 (C.A.), a case heard a couple of months before *Summers* v. *Salford Corporation* reached the Court of Appeal, but not referred to on that occasion. In *Boudou* v. *Thornton-Smith* the tenant of war-damaged shop premises successfully appealed against an order of the county court that his notice of disclaimer was of no effect. The damage was such that it could easily and quickly be repaired, but all witnesses agreed that till this was done business could not be carried on on the premises. The Court of Appeal held that in such circumstances the definition of " unfit " to be found in the Landlord and Tenant (War Damage) Act, 1939, s. 24, was satisfied, i.e., the building was unfit for the purpose for which it was used or adapted for use immediately before the occurrence of the war damage. (For a discussion of this case, see 85 SOL. J. 197.)

In his judgment in *Boudou* v. *Thornton-Smith*, MacKinnon, L.J., said : " I cannot think that the learned judge was right in saying that those premises are fit . . . because the tenant could do the repairs at a fairly moderate expense. The tenant is under no obligation to do such repairs . . ." The learned lord justice did not apply this reasoning when giving judgment, with some hesitation, in favour of the landlords in *Summers* v. *Salford Corporation ;* but in the latter his lordship appears to have treated s. 188 (4) of the Housing Act, 1936, " in determining for the purposes of this Act whether a house is fit for human habitation, regard shall be had to the extent, if any, to which by reason of disrepair or sanitary defects the house falls short of the provisions of any by-laws in operation in that district," etc., as a complete definition.

However, the decision of the House of Lords on this vexed question follows the same reasoning as that used by the Court of Appeal in *Boudou* v. *Thornton-Smith :* disrepair is one thing, unfitness another, and the point is of considerable importance to all concerned with working-class properties. This, though claims for breach of the obligation rarely come into court ; the reason being, as I recently suggested (86 SOL. J. 365), that covenantees normally seek to enforce their rights by complaining to the local sanitary inspector. Possibly the tenant in *Summers* v. *Salford Corporation* thought that in her case to approach the sanitary inspector after advising the rent collector would be appealing from Julius to Cæsar.

Butcher v. *Poole Corporation.*

This case, in which it was held that leave should not be sought under the Courts (Emergency Powers) Acts to enforce judgments for possession, is, of course, of great interest to landlords ; but I do not propose to discuss it in the " Notebook," as it was the subject of a special article in our issue of 21st November (86 SOL. J. 345). Lord Simon's hypothetical example of a negotiated surrender is, however, specially worth noting for those concerned with this branch of the law. And, having sometimes to confess mistakes, perhaps I may be pardoned if I suggest that the result attained has from time to time been forecast in the " Notebook," e.g., in articles on " Forcible Entry and Emergency Legislation," 23rd August, 1941 (85 SOL. J. 346), " New Forms of Statutory Protection " on 18th October, 1941 (85 SOL. J. 409), and " The Courts (Emergency Powers) Acts and Judgments for Possession " on 31st January, 1942 (86 SOL. J. 31).

Notes and News.

Honours and Appointments.

The King has been pleased to appoint the Hon. JAMES GREIG SHEARER, I.C.S., so be a Judge of the High Court in Patna in the vacancy that will occur in consequence of the appointment of Sir Saiyid Fazl Ali to be Chief Justice of the Patna High Court. The Hon. James Shearer was called by the Middle Temple in 1936.

Notes.

Mr. J. M. GOVER, K.C., has been elected treasurer of the Middle Temple for 1943.

Mr. Ernest E. Bird has been re-elected Chairman of the Legal & General Assurance Society, Ltd., for the ensuing year. The Hon. W. B. L. Barrington has been re-elected Vice-Chairman.

Mr. Henry Grimsdall, M.B.E., who died recently, aged eighty-seven, was high bailiff of Shoreditch County Court for thirty-five years. Previously he was chief clerk of Bow County Court. He retired about two years ago.

Sir Walter Monckton, K.C., who returned to the Bar some months ago, is to visit Sweden. He will address several meetings and speak of his wartime visits to Russia, the Middle and Far East, Malta, Canada and the United States.

The Treasury announces that Friday, 1st January, shall be observed as a close-holiday in all banks in England, Wales and Northern Ireland. This step has been taken solely to enable the banks to attend without interruption to the special work of that day. The day will not be a general holiday for the public.

Section 3 (5) of the War Damage Act, 1941, provides that the Treasury shall prescribe by regulation the matters by reference to which properties not normally the subject of sales in the open market are to be valued. The Regulations have just been made (S.R. & O., 1942, No. 2490), and it is understood that the Commission is contemplating the issue of a new series of Practice Notes early in 1943, which will contain a reference to the Regulations and the procedure to be adopted in submitting claims in respect of properties of this kind.

Mr. Boyce asked the Chancellor of the Exchequer on Tuesday, 15th December last, whether post-war income tax credits are regarded as part of a taxpayer's estate in event of his death ; and, if so, whether estate duty is payable thereon. Sir Kingsley Wood stated in his reply that in the event of the taxpayer's death before the date fixed for payment of the post-war credit, the right to receive the credit passes to his personal representative, who may dispose of it as part of his estate, and the amount of the credit is exempted from death duties by s. 7 (4) of the Finance Act, 1941.

As announced by the chairman at the last annual meeting, Mr. Workman will relinquish his position as managing director of the Legal & General Assurance Society, Ltd., on the 31st December 1942., At a recent meeting of the board, Mr. Ernest E. Bird, the chairman referred in very warm terms to Mr. Workman's long and valuable service to the society and expressed his satisfaction, and that of all the directors, that Mr. Workman would continue to serve as a director of the Society. Mr. Workman has been connected with the Legal & General for thirty-three years. He was appointed general manager in 1921, which position he held for sixteen years. He has been managing director since 1937.

Parliamentary News.

ROYAL ASSENT.

The following Bills received the Royal Assent on Thursday, 17th December :—

Edinburgh Merchant Company Endowments (Amendment) Order Confirmation.
Expiring Laws Continuance.
National Service.
Supreme Court (Northern Ireland).

HOUSE OF COMMONS.

Crown Lands Bill [H.C.].
Read First Time. [17th December.

To-day and Yesterday.

21 December.—In 1747 England and France were at war. In October, Admiral Hawke, cruising between Ushant and Cape Finisterre, intercepted a large convoy sailing from La Rochelle for the West Indies and fought a brilliantly successful action with the escorting squadron, consisting of eight large warships, of which six were captured. The two others made good their escape chiefly, it was thought, through a blunder of Captain Fox of the "Kent," who was tried by court martial at Portsmouth on a charge of not coming properly into the fight and not doing his utmost to engage, distress and endamage the enemy. The evidence on his behalf amply established his personal courage, and on the 21st December the court acquitted him of cowardice, though sentencing him to be dismissed his ship for paying too much regard to the advice of his officers contrary to his better judgment.

22 December.—On the 22nd December, 1894, Captain Alfred Dreyfus was found guilty by a court martial of having communicated to the German military attaché in Paris secret information relating to the French Army. He was condemned to detention for life in a fortified area and eventually interned on Devil's Island off the coast of Guiana. The chief evidence against him was an anonymous letter abstracted from the German Embassy. It gave a list of documents which the writer, who was evidently a French officer, hoped to send there, and the handwriting was very like that of Dreyfus. The trial, however, was only the opening of a long and complicated story. New facts came to light. An official of the War Ministry found fragments of another letter which seemed to fix the guilt on another officer, but the authorities remained unconvinced and forbade him to pursue his inquiries. Gradually, however, an immense public agitation arose, and at last in 1899 a new trial took place before court martial sitting at Rennes. The result was astonishing. By a majority he was found guilty with extenuating circumstances and condemned to ten years' imprisonment, but the Government immediately pardoned him and he was set free. In 1906 the Court of Appeal finally rehabilitated him.

23 December.—On the 23rd December, 1735, Ralph Rhymer's Chronicle recorded :—

> "A pris'ner to the Judges of Scotland prefer'd
> An innocent Pray'r, which was fav'rably heard.
> He had years lain in Gaol by his creditor fed
> But now only for fees by his keeper was staid.
> He requested those fees as a debt might be stated
> And towards his subsistence the gaoler be rated.
> His Petition was granted without hesitation ;
> May it be a rule thro'out the whole Nation."

24 December.—Wadham Wyndham was called to the Bar by Lincoln's Inn in 1636 and was one of the batch of fourteen barristers summoned to be serjeants immediately after the Restoration. In the trials of the regicides he was one of the counsel for the prosecution, and when they were over he was appointed a Justice of the King's Bench. Sir Thomas Raymond writes of him as a good and prudent man, and Sir John Hawles says he was the "second best judge which sat in Westminster Hall since the King's Restoration." Another tribute describes him as of "great discretion, especially in his calm and sedate temper upon the Bench." He died on the 24th December, 1668, His brother Hugh was likewise a judge, and his grandson Thomas became Lord Chancellor of Ireland and a peer.

25 December.—In 1523 the Inner Temple benchers decided that "the Society shall have for Christmas one boar beside 'a sheld' and two 'roundes' and the commons be accounted weekly, and that those who are commoners shall be charged all expenses except for the players, who shall have 20s., and except the boar above said."

26 December.—Jack Sheppard was hanged in 1724 and within a fortnight "Harlequin Sheppard" had been produced at Drury Lane. His story never died in literature and the drama. On Boxing Day, 1885, there was produced at the Gaiety Theatre "Little Jack Sheppard," a burlesque by William Yardley, a briefless barrister and Bohemian writer, and Pettinger Stephens, a Jewish journalist. It ran for nearly eight months. Nellie Farren, Puck-like as Jack, had a song beginning :—

> "In a box of the Stone-Jug I was born
> Of a hempen widow the kid forlorn."

"Botany Bay," the great song of the piece, fell to the comedian David James, as Blueskin. The chorus went :—

> "Farewell to old England for ever,
> Farewell to my rum culls as well ;
> Farewell to the well-known Old Bailee
> Where as I used for to cut such a swell."

27 December.—In December, 1811, the East End was terrified at two startling crimes. At an interval of about ten days two houses, one in Ratcliffe Highway and the other in New Gravel Lane, were entered in the night, and all the inhabitants massacred in the most savage fashion. Suspicion fell on an Irish sailor called John Williams, lodging at the "Pear Tree" public-house, and he was arrested. On the morning of the 27th December he was found dead in his cell at Cold Bath Fields Prison, having hanged himself with his neckerchief.

Notes of Cases.

HOUSE OF LORDS.

Summers *v.* Salford Corporation.

Lord Atkin, Lord Thankerton, Lord Russell of Killowen, Lord Wright and Lord Romer. 4th December, 1942.

Housing—Implied obligation on landlord to keep premises "reasonably fit for human habitation"—Broken sash cord—Injury to tenant—Whether breach of obligation—Housing Act, 1936 (26 *Geo.* 5 *&* 1 *Edw.* 8, *c.* 51), *s.* 2.

Appeal from the decision of the Court of Appeal upholding a decision of Croom-Johnson, J. (85 Sol. J. 281).

In this action the plaintiff claimed damages against the defendant corporation in the following circumstances : For thirty-four years she had been tenant of an old house owned by the defendant corporation, consisting of two rooms on the ground floor and two bedrooms on the first floor. The rent was 10s. a week. In February, 1940, one of the sash cords of the top sash of the only window in the front bedroom broke and the plaintiff informed the defendants' rent collector, who was authorised to receive complaints. On the 3rd April, 1940, the plaintiff was cleaning the window when the second sash cord broke and the upper sash fell crushing her hand. In this action she claimed damages for the injury, alleging that the defendants, as her landlords, had failed in the statutory obligation imposed by the Housing Act, 1936, s. 2 (1), to keep the premises "in all respects reasonably fit for human habitation." Croom-Johnson, J., held that the fact that the sash cord was broken did not prevent the house being reasonably fit for human habitation. In the event of liability being established, the learned judge assessed the liability at £260. His decision was upheld by the Court of Appeal. The plaintiff appealed.

Their lordships took time.

Lord Atkin said that the case raised the question of the meaning and extent of the phrase "keep in all respects reasonably fit for human habitation." The test could not be whether with the disrepair complained of the tenant could live in the house. It must not be measured by the magnitude of the repairs required. A burst or leaking pipe, a displaced slate, a stopped drain, a rotten stair tread might each of them until repair make a house unfit to live in, though each of them might be quickly and cheaply repaired. The breaking of one sash cord necessarily involved the strong probability that its fellow would also break, with the further certainty of danger to anyone handling the window. Accordingly, the window must either remain permanently closed or permanently open. Either would prevent that room from being reasonably fit for habitation. As this room was one of only two bedrooms, until repair the whole house could reasonably be described as unfit for occupation by a working-class family. The point whether notice of the lack of repair must be given to the landlord before his statutory duty arose had not to be considered in this case and that question must be left open. The appeal must be allowed.

The other noble and learned lords concurred.

Counsel : *Neville Laski*, K.C., and *Armstrong Cowan* (for *Harold Lever*, on war service) ; *Humphrey Edmunds*.

Solicitors : *J. H. Milner & Son*, for *Leslie M. Lever & Co.*, Manchester ; *L. Bingham & Co.*, for *James Chapman & Co.*, Manchester.

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

Owners of the "Larchbank" *v.* Owners of the "British Petrol."

Viscount Simon, L.C., Lord Atkin, Lord Thankerton, Lord Wright and Lord Porter. 4th December, 1942.

Shipping—Collision—Vessels in convoy—Failure to give fog signals—Admiralty instructions.

Appeal from the decision of the Court of Appeal.

On 24th April, 1940, the motor vessel "British Petrol" was the last ship in the starboard column of a convoy. The motor vessel "Larchbank" was under orders to join the convoy and to take station astern of the "British Petrol." The two vessels sighted each other at a distance of some three-quarters of a mile, the "Larchbank" being on the port bow of the other vessel. The "Larchbank" then put her engines at full speed. Immediately afterwards a dense fog descended. Both vessels continued on their course, neither sounded any fog signals. The vessels sighted each other when the "Larchbank" was crossing the bows of the "British Petrol" at right angles and a collision ensued. Bucknill, J., assisted by an Elder Brother of the Trinity House, decided that both vessels were to blame, and he attributed the fault as to three-quarters to the "Larchbank" and as to the remaining quarter to the "British Petrol." The Court of Appeal reversed this decision, finding the "Larchbank" solely to blame. The owners of the "Larchbank" appealed, contending that the "British Petrol" was also to blame as she was negligent in failing to sound fog signals. Under their emergency powers the Admiralty had issued instructions binding on mariners in war-time providing *inter alia* that : "The use of fog signals or whistles in a fog by ships in convoy is undesirable and they are not to be sounded except in an emergency or on hearing another ship approaching when the master must use his discretion."

Their lordships took time.

Viscount Simon, L.C., said Bucknill, J., took the view that an emergency had arisen so far as the "British Petrol" was concerned with relation to the "Larchbank" and she ought to have sounded a fog signal. The Court of Appeal took a different view, holding there was no emergency. He was unable to accept that view. What constituted the emergency in this case was not the fog but the fact that the "Larchbank" was rapidly approaching. He thought from the point of view of the "British Petrol" there was, within the meaning of the Admiralty instructions an emergency analogous

to the situation which would have occurred if the "British Petrol" had heard the "Larchbank" approaching. The appeal must be allowed.

The other noble and learned lords delivered opinions concurring.

COUNSEL: *Hayward*, K.C., and *Porges; Carpmael*, K.C., and *O. Bateson*.

SOLICITORS: *Thomas Cooper & Co.; William A. Crump & Son*.

[Reported by MISS B. A. BICKNELL, Barrister-at-Law.]

APPEALS FROM COUNTY COURT.

Jones *v.* Amalgamated Anthracite Collieries, Ltd.

MacKinnon, Goddard and du Parcq, L.JJ.
29th October and 13th November, 1942.

Master and servant—Workmen's compensation—Basis of partial incapacity—"Earning or . . . able to earn in some suitable employment"—Pay and allowances as conscripted soldier—Workmen's Compensation Act, 1925 (15 & 16 *Geo.* 5, *c.* 84), *s.* 9 (3) (i).

Employers' appeal from an award of the learned county court judge sitting as arbitrator at Ammanford on 5th August, 1942.

Prior to 15th June, 1932, the employers employed the workman as a collier, but on that date he broke his pelvis and crushed his back in an accident at work. Until 1935 he was paid compensation on the basis of total incapacity, but after that he was paid on the basis of partial incapacity up to 15th November, 1937, being employed overground at the screens. His average earnings before 15th June, 1932, were £2 10s. per week. After 15th November, 1937, a rise in wages brought his earnings up to more than £2 10s. per week, and his employers ceased to pay compensation for partial incapacity. By September, 1940, he was regularly employed at the screens at £3 15s. 4d. per week. On 30th September, 1940, he was called up for service in the Army under the National Service (Armed Forces) Act, 1939, and after that date served as a gunner, his pay and allowances amounting to £2 0s. 9d. per week. The arbitrator awarded him compensation on the basis of partial incapacity under s. 9 (3) (i) of the 1925 Act at the rate of 4s. 11½d. per week. The arbitrator found that the cause of his inability to earn £3 15s. 4d. per week was due not to any physical incapacity, but solely to his conscription under the 1939 Act. Section 9 of the Act begins: "The compensation under this Act where . . . partial incapacity for work results from the injury shall be a weekly payment during the incapacity of an amount calculated in accordance with the rules hereinafter contained . . ." Subsection (3) (i), which the learned arbitrator treated as the material one, provides: ". . . one-half the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or able to earn in some suitable employment or business after the accident."

MACKINNON, L.J., said that the reference to employment or business in the alternative showed that "the amount which he is earning" was contemplated as being under a contract. The £2 0s. 9d. received as pay and allowances by the workman in his status as a conscript was not what he was "earning" in any employment or business, and therefore the alternative had to operate. On that alternative he was able to earn £3 15s. 4d. per week at the screen work, but for the fact that the operation of the 1939 Act debarred him from engaging in any employment or business. The question whether army pay or allowances were earnings was a question of law, and no admission by the parties could bind the county court judge or his lordship to agree with it. His lordship referred to *Thomas* v. *Watson, Ltd.* [1916] S.C. 23; 9 B.W.C.C. 428, and *Port of London Authority* v. *Gray* [1919] 1 K.B. 65, and said that they were both cases of voluntary enlistment, and in the latter Duke, L.J., emphasised that it was a case of voluntary enlistment and expressly reserved the question as to the effect of a man serving as a conscript. In the present case the man was pretty well recovered and admittedly fit to earn more than before the accident. The appeal should be allowed.

GODDARD, L.J., concurred.

DU PARCQ, L.J., said that the words "which he is earning" stood unqualified (*Blakemore* v. *Delta Mell* (1919), *Ltd.*, 28 B.W.C.C. 193), but circumstances might be such that the wages which he was receiving were not properly to be regarded as earnings within the meaning of the section at all. His lordship referred to the speech of Lord Dunedin, at p. 56, in *Heathcote* v. *Haunchwood Collieries, Ltd.* [1918] A.C. 52, and said that the object of s. 9 was to provide a method of computing the amount of the compensation for incapacity to work (and so to earn wages) resulting from an injury. The purpose of the section was not to give compensation to a workman when the lessening of his ability to earn resulted from a cause wholly unconnected with the injury.

Appeal allowed.

COUNSEL: *Carey Evans; Gilbert Paull; Gerwyn Thomas*.

SOLICITORS: *Botterell & Roche*, for *Llewellyn & Hann*, Cardiff; *J. T. Lewis & Woods*, for *Randell, Saunders & Randell*, Swansea.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION.

Sawyer and Another *v.* Windsor Brace, Ltd.

Croom-Johnson, J. 22nd October.

Mistake of law—Recovery of money paid—Voluntary payment—Effect of threat of proceedings.

Action for the return of money paid under a mistake of law.

The plaintiffs alleged in their statement of claim that the payment, which was otherwise voluntary, was only made because of a threat of legal proceedings and the effect of that threat was to make the payment non-voluntary. The plaintiffs were landlords of 60, Arlington Road, Camden Town, which they let to the defendants. Under the terms of their tenancy the defendants paid to the plaintiffs a year's rent in advance, being £275, in respect of the west wing of the premises as from 24th October, 1940, and one quarter's rent in advance, being £50, in respect of the east wing as from the same date. On 14th October, 1940, the premises were destroyed by enemy action, and the defendants thereupon gave notice of disclaimer under s. 4 of the Landlord and Tenant (War Damage) Act, 1939. There was no counter-notice by the landlords under s. 4 (5). Under s. 8, as from the date the notice of disclaimer was served the lease was deemed to have been surrendered. It was not then the law that rent paid in advance by the tenants could be recovered by them in such circumstances. On 7th August, 1941, the Landlord and Tenant (War Damage) Amendment Act, 1941, was passed, which provided in s. 13 that where a lease was deemed to be surrendered by virtue of the 1939 Act, "the rent payable in respect of the period during which the surrender takes effect or the rent ceases to be payable as aforesaid shall be apportionable, whether the rent under the lease is payable in advance or otherwise, and any rent paid by the tenant in respect of that period in excess of the amount apportionable to the part of the period preceding the date on which the surrender takes effect or the rent ceases to be payable . . . shall be recoverable by him." After some correspondence between the solicitors for the respective parties relative to whether s. 13 of the amending statute was or was not retrospective, the defendants' solicitors threatened proceedings for the recovery of money overpaid under s. 13, and the plaintiffs' solicitors on 27th November, 1941, sent a cheque "in discharge of your clients' claim herein," and this was duly acknowledged. On 14th January, 1942, Stable J., held in *London Fan and Motor Co., Ltd.* v. *Silverman*, 167 L.T.R. 89, that s. 13 of the amending statute had not retrospective effect, and the plaintiffs reclaimed the money which they had paid on 27th November, 1941.

CROOM-JOHNSON, J., said that a voluntary payment could not be recovered (*Henderson* v. *The Folkestone Waterworks*, 1 T.L.R. 329). The only case cited in support of the proposition that a threat of proceedings is sufficient to prevent a payment from being voluntary was *North* v. *Walthamstow U.D.C.*, 15 T.L.R. 7. That was a threat of proceedings, in totally different circumstances. It was a threat by a local authority, as a result of which the plaintiff reclaimed from the local authority what he had been compelled by the threat to pay to a builder to repair sewers for which, on a true view of the law, the local authority was responsible. Lord Kenyon said in *Marriott* v. *Hampton*, 7 L.T.R. 269: "After a recovery by process of law there must be an end of litigation, otherwise there is no security for any person." See also *Brown* v. *M'Kinally*, 1 Esp. 279; *Rogers* v. *Ingham*, 3 Ch. D. 351, 357. The argument for the plaintiff permitted the law to say that if you paid up when proceedings were taken against you, even although the proceedings were withdrawn upon the payment and had not gone very far, the basis of it was exactly the same as if the action had been contested not right up to judgment but a long way and then the defendants had submitted to pay. The principle was that of *Marriott* v. *Hampton*, *supra*. (See *Maskell* v. *Horner* [1915] 3 K.B. 106; *Moore* v. *Fulham Vestry* [1895] 1 Q.B. 399.) Though not content that a payment had been made as a result of threats, his lordship had assumed it for the purpose of the judgment. It was just as likely to have been made by reason of the solicitors for the plaintiffs having been persuaded by the letters of the solicitors for the defendants that the advice of their counsel was right and that accordingly the payment was rightly claimed. Judgment for the defendants.

COUNSEL: *G. W. Squibb; A. Safford*.

SOLICITORS: *Harris, Chetham & Co.; Underwood & Co.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

War Legislation.

STATUTORY RULES AND ORDERS, 1942.

E.P. 2353. **Apparel and Textiles.** Knitted Goods (Manufacture and Supply) (No. 3) Directions, Dec. 2.

E.P. 2505. **Benzole Recovery Plant** Order, Dec. 1.

E.P. 2458. **Blocked Accounts** (Authorized Investments) (No. 2) Order, Dec. 14.

E.P. 2521. **Feeding Stuffs** (Regulation of Manufacture) Order, 1942. Amendment Order, Dec. 10.

No. 2519. **Fire Services** (Emergency Provisions). National Fire Service (Preservation of Pensions) Regulations, Nov. 24.

E.P. 2538. **Fish** (Supplies to Catering Establishments) Order, Dec. 12.

E.P. 2526. **Food** (Points Rationing) (No. 2) Order, 1942. Amendment Order, Dec. 11. (Oat flakes and Canned Fish).

E.P. 2516. Food Rationing Orders, 1942. Supplementary Directions, Dec. 9.

E.P. 2513. **Limitation of Supplies** (Miscellaneous) (No. 18) Order, Dec. 9. (Rings).

E.P. 2511. Limitation of Supplies (Miscellaneous) General Licence, Dec. 9, *re* supply of toy uniforms.

E.P. 2487 and 2488 (as one document). **Machinery, Plant and Appliances** (Control) (No. 3) Order and General Licence, Dec. 9.

E.P. 2539. **Milk Marketing Board** (Modification of Functions) Order, Dec. 11.

E.P. 2506. **Public Utility Undertakings.** Benzole Recovery Plant General Direction, Dec. 1.

E.P. 2528. **Rationing** (Personal Points) Order, 1942. Amendment Order, Dec. 11.

E.P. 2489. **Supply of Office Machinery** (Restriction) (No. 2) Order, Dec. 9.

No. 2427. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 19) Order, Dec. 5.

No. 2478. Trading with the Enemy. (Specified Persons) (Amendment) (No. 20) Order, Dec. 9.